ernment, the evils attendant upon such condition would, standing alone, present a weighty argument against granting the relief at the suit of a single taxpayer. Obviously the enjoining of the fiscal officer of a state stands upon an entirely different footing from granting the same remedy against the like officer of a municipal corporation. In the latter case the injunction operates only in the municipality, a comparatively small area of the state; whatever harm it might work there it would not act upon the entire state. But the enjoining of the state officials would affect the whole state and its inhabitants. It would be within the power of a private citizen to paralyze an important arm of the state government. Needless to say the exercise of this power might in some cases be attended with disastrous consequences. Thus under the doctrine which grants relief, there would be vested in the individual more power than would seem wise to permit.

JUSTIFICATION IN CASES INVOLVING INTERFERENCE WITH TRADE OR CALLING.—The right to carry on a lawful business or to exercise a legitimate calling without unlawful interference is universally recognized. Modern developments of the law sustain the proposition that intentional interference with another's business or occupation is actionable if no justification is established.[1] The theory of justification in such cases consists in compromise between conflicting rights by estimating in the light of public policy and social advantage the limits within which the rights of one person may be restricted in order to allow another to exercise an opposing interest.[2] It is plain from its indefinite nature that no statement of what constitutes justification applicable to all cases may accurately be proposed. In general to justify an intentional injury to a lawful trade it must appear that the act complained of was otherwise lawful, that the means employed were not illegal, and that the object sought tended to the advancement and interest of the doer.[3] Interference with contract relations in general is actionable.[4] It is necessary that the wrong-doer have knowledge of the existence of

[1] Huskie *v.* Griffin, 75 N. H. 345, 74 Atl. 595, 27 L. R. A. (N. S.) 966; Willner *v.* Silverman, 109 Md. 341, 71 Atl. 962; Wesley *v.* Native Lumber Co., 97 Miss. 814, 53 South. 346. But see Pollock, Torts, 8th ed., p. 346.

[2] In 28 Law Quart. Rev. 67, it is said: "The theory of justification consists in a proper adjustment and compromise between the two competing rights that are equally protected in law. It has been already observed that the enjoyment by a particular individual of the right of freedom, as to how he should bestow his capital and labor, is not absolute, but qualified by the existence of equal rights in the other members, to such an extent, as to be made compatible with an equally free enjoyment of these rights by the rest of the community. In fact, every case of justification reduces itself to the question, how far the rights of an individual can be so circumscribed in accordance with a general law of freedom, as to leave an equal scope for the free enjoyment of the competing rights of his fellow men."

[3] Hutton *v.* Watters (Tenn.), 179 S. W. 134 (principal case).

[4] Wheeler-Stenzel Co. *v.* American Window Glass Co., 202 Mass. 471, 89 N. E. 28.

the contract and that he causes its breach in bad faith. Justification for such acts may be shown by setting up an equal or superior right in the person causing the breach.[5] A third person is not liable for inducing another to terminate a contract of partnership which was terminable at will.[6]

The chief source of justification in adjusting injuries to business or calling is in the right of competition. Business competition carried on in a lawful manner is a complete defense to whatever injuries are accomplished by lawfully pursuing a competing business.[7] So in the absence of unlawful means and where no breach of contract is procured it is justifiable for a competitor to induce the customers of another to transfer their trade to him.[8] This right to compete is not limited by the damage done and fair competition lawfully conducted may completely drive a rival out of business with no liability attaching to the successful competitor.[9]

However, the competition must be genuine and not pretended. It has been held in a few cases which have considered the question that a simulated competition carried on with the express purpose of injuring another's business is actionable if injury results.[10] It is not necessary that every particular transaction in trade be conducted for the profit of the trader provided that his business in general assumes the aspect of real competition.[11]

Another form of competition which is advanced as matter of justification is that involved in labor controversies. The American decisions have not allowed labor competition the high place which competition in trade or commerce has been conceded.[12] In boycotts carried on by labor unions the means, though otherwise lawful, create an intense form of coercion which renders them actionable and the methods used and the continuance of boycotts may be enjoined in the proper cases.[13] The fact that the boycott was conducted for the benefit and advancement of the union will not avail to justify it.[14]

It is clear that the adjustment of the wages or the reduction of

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[5] See note 7, *infra*. See also, Berry *v.* Donovan, 188 Mass. 353, 74 N. E. 603.

[6] McGuire *v.* Gerstley, 204 U. S. 489.

[7] Lewis *v.* Hine Hodge Lumber Co., 121 La. 658, 46 South. 685; Mogul S. S. Co. *v.* McGregor, L. R. 23 Q. B. Div. 598.

[8] Citizens' Light, Heat & Power Co. *v.* Montgomery Light & Water Power Co., 171 Fed. 553.

[9] Mogul S. S. Co. *v.* McGregor, *supra;* Lough *v.* Outerbridge, 143 N. Y. 271, 38 N. E. 292, 25 L. R. A. 674.

[10] Tuttle *v.* Buck, 107 Minn. 145, 119 N. W. 946, 22 L. R. A. (N. S.) 599, 131 Am. St. Rep. 446, 16 Ann. Cas. 807; Boggs *v.* Duncan-Sebell Furniture Co., 163 Iowa 106, 143 N. W. 482, L. R. A. 1915B, 1196. See Dunsbee *v.* Standard Oil Co., 152 Iowa 623, 132 N. W. 371, 36 L. R. A. (N. S.) 263.

[11] Mogul S. S. Co. *v.* McGregor, *supra;* Lough *v.* Outerbridge, *supra.*

[12] See 1 Street, Foundations of Legal Liability, p. 361.

[13] Casey *v.* Cincinnati Typographical Union, 45 Fed. 135; Beck *v.* Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407.

[14] See Casey *v.* Cincinnati Typographical Union, 45 Fed. 135, 143.

the hours of labor or any other change for the benefit of the employees attempted by a peaceable strike will not render the employees or the union which they represent liable to the employer even if he is injured.[15] Difficulty arises when the effect of a strike is to cause damage to persons other than the employers. Difference of opinion prevails in the courts on the question of the liability of labor unions when they institute strikes to procure the discharge of non-union men or as it is commonly called—to secure the closed shop.

The most widely held view seems to be that such strikes or similar transactions with employers, though conducted in a lawful manner, create a right of action against the union or union agents when the non-union men are deprived of their employment.[16] It is considered that the benefit or advancement of the union by such acts does not create in its members a self-interest which is sufficient to justify the injury to the non-union men who are deprived of their occupation. The reason advanced by the courts upholding the opposite view is that such strikes tend to unify and strengthen the organization of labor thereby creating a more effectual means to maintain successfully their rights in controversy with the employers.[17]

Where strike was threatened to procure the discharge of a workman merely because he was "obnoxious" or "distasteful" to his fellow workmen, the discharged employee was allowed to recover damages from such employees.[18] But where the discharged employee's system of work is unfair or prejudicial to the other employees a strike to compel his dismissal was considered justifiable.[19]

Where an employer notified his employees not to trade with plaintiff on pain of dismissal the resulting injury to plaintiff's business is an actionable wrong.[20] However, where defendant operated an establishment similar to plaintiff's in connection with his main business such conduct was held justifiable as fair competition and no recovery was had for damage caused thereby.[21]

It has been advanced in a few cases that friendly advice and good motives constitutes sufficient justification in cases of interference

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[15] Karges Furniture Co. *v.* Amalgamated Woodworkers Local Union, No. 131, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. (N. S.) 788; Jetton-Dekle Lumber Co. *v.* Mather, 53 Fla. 969, 43 South. 590.

[16] Berry *v.* Donovan, *supra;* Erdman *v.* Mitchell, 207 Pa. 79, 56 Atl. 327; Lucke *v.* Clothing Cutters' Assembly, 77 Md. 396, 26 Atl. 505; Folsom *v.* Lewis, 208 Mass. 336, 94 N. E. 316.

[17] Kemp *v.* Division No. 241, 255 Ill. 213, 99 N. E. 389; National Protective Ass'n *v.* Cumming, 170 N. Y. 315, 63 N. E. 369. See dissenting opinion of Justice Holmes in Plant *v.* Wood, 176 Mass. 492, 57 N. E. 1011.

[18] Bausbach *v.* Reiff, 244 Pa. 559, 91 Atl. 224; DeMinco *v.* Craig, 207 Mass. 593, 94 N. E. 317.

[19] Minasian *v.* Osborne, 210 Mass. 250, 96 N. E. 1036.

[20] Graham *v.* St. Charles Street R. R. Co., 47 La. Ann. 214, 16 South. 806, 27 L. R. A. 416, 49 Am. St. Rep. 366; Wesley *v.* Native Lumber Co., *supra.* But see Gott *v.* Berea College, 156 Ky. 376, 161 S. W. 204, 51 L. R. A. (N. S.) 17.

[21] Lewis *v.* Hine-Hodge Lumber Co., *supra.*

with trade or calling. An English case expressly ruled that no such case of justification existed.[22] But in this country though there is little consideration of it in the cases, it has been indicated that liability will not attach where the interference is by way of friendly or neighborly advice, honestly given.[23]

In the recent case of *Hutton* v. *Watters* (Tenn.), 179 S. W. 134, it is held that intentional interference with the business of plaintiff by preventing her from obtaining boarders and by depriving her of boarders by threats and other means not unlawful in themselves is actionable where the circumstances show no justification for defendant's acts. The court in this case criticises *Payne* v. *Railroad* Co.,[24] and expressly overrules it in so far as it is in conflict with the opinion.

It is repeated that no satisfactory rule can be put forward to cover all cases where justification is the deciding element. These notes attempt only to set out what seems to be the main principles and to point to a few instances of their application.

RIGHT OF REMOVAL AS INCIDENT TO THE POWER OF APPOINTMENT AS APPLIED TO STATE OFFICERS.—The conflict of authorities on this question is more apparent than real and is due mainly to a failure to carefully distinguish the different constitutional and legislative provisions on the removal of officers. Hence it is essential to classify the legislation to some degree in order to arrive at the true doctrine controlling the question. And it is well to bear in mind that the power of amotion from office is not a judicial power, but is an administrative one, though it be exercised in a judicial manner.[1]

The class of cases in which a state gives some officer or board power to appoint a subordinate officer and also provides the way in which he shall be removed gives no trouble as it is clear that the statute must be followed; likewise the class in which the statute provides that the incumbent may be removed "for cause" may be dismissed as unequivocal.[2] These two types of legislative provisions should be noted only that they may not be confused with cases

[22] South Wales Miners' Federation *v.* Glamorgan Coal Co., (1905) A. C. 239.

[23] See Walker *v.* Cronin, 107 Mass. 555; West Virginia Transportation Co. *v.* Standard Oil Co., 50 W. Va. 611, 40 S. E. 591, 88 Am. St. Rep. 895, 56 L. R. A. 804.

[24] 13 Lea (Tenn.) 507, 49 Am. Rep. 666. In this case the plaintiff, a storekeeper, had incurred the ill will of the defendant railroad company. The defendant through no reason of benefit to the company but on account of the altercation with the plaintiff forbade its employees to deal with the plaintiff and threatened to discharge those who continued to do so. It was held that no action could be brought for resulting injury to the plaintiff.

[1] State *v.* Superior, 90 Wis. 612, 619, 64 N. W. 304; Nehrling *v.* State, 112 Wis. 637, 645, 88 N. W. 610.

[2] State *v.* City of Duluth, 53 Minn. 238, 55 N. W. 118, 39 Am. St. Rep. 595; McNiff *v.* City of Waterbury, 82 Conn. 43, 72 Atl. 572, 135 Am. St. Rep. 247, 250.